Filed 10/13/09 Estate of Unger CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

Estate of CAROL LEE UNGER, Deceased.	H033373 (Santa Clara County Super. Ct. No. PR161039)
MARK UNGER et al., Petitioners and Respondents, v. MICHAEL ADAMS, Claimant and Appellant.	

Claimant Michael Adams appeals from an order of final distribution in a probate proceeding regarding the estate of Carol Lee Unger. He filed papers in the case stating that he was 42 years old and the natural son of Unger but had been adopted at age six by Unger's mother and the mother's husband. The trial court distributed the estate to Unger's sons, petitioners Marc Raymond Unger and Anthony Edward Unger. On appeal, Adams presents a deficient, an unfocussed, and a barely coherent discourse that essentially challenges us to find error. We therefore affirm the order.

BACKGROUND

On appeal, Adams is representing himself and advances a litany of grievances against his brothers stemming from childhood through the present day and against the trial court stemming from the court's treatment of him at a court hearing. We glean that

his legal complaint is that the trial court erred by not distributing one-third of Unger's estate to him notwithstanding Probate Code section 6451, which provides that "An adoption severs the relationship of parent and child between an adopted person and a natural parent of the adopted person" unless two requirements are proved.[1]

Under the law, one may act as his or her own attorney if he or she chooses. But when a litigant appears in propria persona, he or she is held to the same restrictive rules of procedure and evidence as an attorney--no different, no better, no worse. (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639; *Monastero v. Los Angeles Transit Co.* (1955) 131 Cal.App.2d 156, 160-161.)

DISCUSSION

The first problem with Adams's appeal is that he attempts to support his argument without providing a reporter's transcript of the relevant proceedings or any other adequate statement of the evidence. The record consists of a clerk's transcript that includes the papers Adams filed and the final order. Generally, appellants in ordinary civil appeals must provide a reporter's transcript at their own expense. (*City of Rohnert Park v. Superior Court* (1983) 146 Cal.App.3d 420, 430-431.) In lieu of a reporter's transcript, an appellant may submit an agreed or settled statement. (*Leslie v. Roe* (1974) 41 Cal.App.3d 104; Cal. Rules of Court, rules 6, & 7.)[2]

In numerous situations, appellate courts have refused to reach the merits of an appellant's claims because no reporter's transcript of a pertinent proceeding or a suitable

[1] The requirements are set forth in Probate Code section 6451, subdivision (a) as follows: "(1) The natural parent and the adopted person lived together at any time as parent and child, or the natural parent was married to or cohabiting with the other natural parent at the time the person was conceived and died before the person's birth[,] [and] (2) The adoption was by the spouse of either of the natural parents or after the death of either of the natural parents."

[2] Pursuant to California Rules of Court, rule 8.121, Adams filed a notice to proceed on his appeal with a clerk's transcript only.

substitute was provided. (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 273-274 [transfer order]; *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296 [attorney fee motion hearing]; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575 (lead opn. of Grodin, J.) [new trial motion hearing]; *In re Kathy P.* (1979) 25 Cal.3d 91, 102 [hearing to determine whether counsel was waived and the minor consented to informal adjudication]; *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447 [trial transcript when attorney fees sought]; *Estate of Fain* (1999) 75 Cal.App.4th 973, 992 [surcharge hearing]; *Hodges v. Mark* (1996) 49 Cal.App.4th 651, 657 [nonsuit motion where trial transcript not provided]; *Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448 [monetary sanctions hearing]; *Null v. City of Los Angeles* (1988) 206 Cal.App.3d 1528, 1532 [reporter's transcript fails to reflect content of special instructions]; *Buckhart v. San Francisco Residential Rent etc., Bd.* (1988) 197 Cal.App.3d 1032, 1036 [hearing on Code Civ. Proc., § 1094.5 petition]; *Sui v. Landi* (1985) 163 Cal.App.3d 383, 385-386 [motion to dissolve preliminary injunction hearing]; *Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 713-714 [demurrer hearing]; *Calhoun v. Hildebrandt* (1964) 230 Cal.App.2d 70, 71-73 [transcript of argument to the jury]; *Ehman v. Moore* (1963) 221 Cal.App.2d 460, 462 [failure to secure reporter's transcript of settled statement].)

The reason for this follows from the cardinal rule of appellate review that a judgment or order of the trial court is presumed correct and prejudicial error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) "In the absence of a contrary showing in the record, all presumptions in favor of the trial court's action will be made by the appellate court. '[I]f any matters could have been presented to the court below which would have authorized the order complained of, it will be presumed that such matters were presented.' " (*Bennett v. McCall* (1993) 19 Cal.App.4th 122, 127.) This general principle of appellate practice is an aspect of the constitutional doctrine of reversible error. (*State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610.) " 'A necessary corollary to this rule is that if the record is

inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.' " (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) "Consequently, [appellant] has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an issue requires that the issue be resolved against [appellant]." (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.)

Whether Adams perfected a claim against Unger's estate, and proved the exceptions to Probate Code section 6451, cannot be determined on an appeal from the clerk's transcript. The absence of a reporter's transcript renders impossible any meaningful review of Adams's appellate contention.

The inadequacy of the appellate record leads to the second problem with this appeal. Adams's briefs are necessarily deficient for failing to cite appropriate references in the record. Not one of the factual assertions in the opening brief refers to evidentiary support.

It is well established that any statement in an appellate brief concerning matters in the record--whether factual or procedural, and no matter where in the brief the reference occurs--must be supported by a citation to the record. (Cal. Rules of Court, rule 8.204(a)(2)(C); *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239 & fn. 16; *Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 29-30.) When an opening brief fails to make appropriate references to the record in connection with the points urged on an appeal, the appellate court may treat those points as having been waived, and may disregard the accompanying arguments. (*Colt v. Freedom Communications, Inc.* (2003) 109 Cal.App.4th 1551, 1560-1561; *City of Lincoln v. Barringer*, *supra*, at p. 1239; *Annod Corp. v. Hamilton & Samuels* (2002) 100 Cal.App.4th 1286, 1301; *Gotschall v. Daley* (2002) 96 Cal.App.4th 479, 481, fn. 1; *Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979.)

Moreover, Adams's briefs are devoid of any analysis or discussion, supported by pertinent authority, which discloses to us the course of logical or legal reasoning by which Adams came to the conclusions he wants us to adopt. (*Berger v. California Ins. Guarantee Assn.* (2005) 128 Cal.App.4th 989, 1007; *Interinsurance Exchange v. Collins, supra*, 30 Cal.App.4th at p. 1448 ["[P]arties are required to include argument and citation to authority in their briefs, and the absence of these necessary elements allows this court to treat appellant's [contentions] as waived"]; *Dills v. Redwoods Associates, Ltd.* (1994) 28 Cal.App.4th 888, 890, fn. 1 [appellate court "will not develop the appellants' arguments for them"]; Cal. Rules of Court, rule 8.204(a)(1)(B) [each point in a brief must be supported by "argument and, if possible, by citation of authority"]; see also Eisenberg et al. Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2008) ¶ 9:21, p. 9-6 (rev. #1 2008) ["appellate court can treat as *waived* any issue that, although raised in the briefs, is *not supported by pertinent or cognizable legal argument or proper citation of authority*"].) "The reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment. It is entitled to the assistance of counsel. Accordingly, every brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration." (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 701, p. 769.) "The purpose of requiring headings and coherent arguments in appellate briefs is 'to lighten the labors of the appellate [courts] by requiring the litigants to present their cause systematically and so arranged that those upon whom the duty devolves of ascertaining the rule of law to apply may be advised, as they read, of the exact question under consideration, instead of being compelled to extricate it from the mass.' " (*Opdyk v. California Horse Racing Bd.* (1995) 34 Cal.App.4th 1826, 1831, fn. 4.)

For example, Adams advances incoherencies such as, "SPECIFICALLY BY ACTS ORCHESTRATED BY THEM COUPLED WITH ADVERSE JUDGEMENT

[*sic*] THAT IS THE VERY LIVLEHOOD [*sic*] OF THEIR CONTINUOS [*sic*] ACTS, CONDUCT, AND BEHAVIAR [*sic*] TO PROFIR [*sic*] IN COURTS THROUGH EXTRINSIC FRAUD, DISTORTIONS OF THE FACT AND OR MISREPRESENTING THE TRUTH AND CAST APPEALLANT [*sic*] IN A FALSE LIGHT SO AS TO CONFUSE THE ISSUES SO AS NOT TO DETRACT FROM THEIR CONBINED [*sic*] EFFORTS TO EXCHEAT [*sic*] AND OR UNDUE ENRICHMENT." (Original uppercase.) And he includes in his briefs irrelevancies such as letters and memoranda generated after the order in question and as recently as June 2009. (*In re James V.* (1979) 90 Cal.App.3d 300, 304 ["an appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration"].)

Adams's briefs are also deficient because they neither cite the applicable scope of review nor tailor any argument to the applicable scope of review. Adams asks us to "DISREGARD THE LOWER COURTS [*sic*] RULING BASED ON THE TOTALITY OF THE FACTS AND CIRCUMSTANCES BOTH BEFORE, DURING, AND AFTER THE FACT BY ALL PARTIES ENJOINED AND CONCERNED DUE TO LACK OF DUE DILIGENCE, CARE, JUDICIAL DISCRETION, AND RELATED CLERICAL ERRORS UNINVITED AND IN NON CONFORMACE [*sic*] OR AQUACIENCE [*sic*] TO THE FRUITS THEREOF," and "CONSIDER BY INDEPENDENT EXERCISE OF DISCRETION WHETHER RESPONDANTS [*sic*] MARC AND ANTHONY UNGER ACTIONS IN QUESTION IN ADDITION TO UNUSUAL AND UNIQUE CIRCUMSTANCES CONSTITUTE CRIMINAL CIVIL HARRASSMENT [*sic*] OR HARLESS [*sic*] CLERICAL ERROR OR ABUSE OF DISCRETION COUPLED WITH UNFAIR TREATMENT AND OR UNAUTHORIZED JUDGEMENT [*sic*] DIRECTLY CONTRIBUTED TO TORTIOUS BEHAVIAR [*sic*] IN QUESTIONS." (Original uppercase.)

"Arguments should be tailored according to the applicable standard of appellate review." (*Sebago, Inc. v. City of Alameda* (1989) 211 Cal.App.3d 1372, 1388.) Failure to acknowledge the proper scope of review is a concession of a lack of merit. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1021.) " '[I]t is an attempt to place upon the court the burden of discovering without assistance from appellant any weakness in the arguments of the respondent. An appellant is not permitted to evade or shift his [or her] responsibility in this manner.' " (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 102.)

DISPOSITION

The order of final distribution is affirmed.

Premo, J.

WE CONCUR:

Rushing, P.J.

Elia, J.